



Community Leasing Policy

Sutherland Shire Council

Document review and approval

This document has been approved by

	Name	Minute No	Date approved
1	Finance, Resources & Management Committee – FIN057-93	340	27 April, 1993
2	Finance, Resources & Management Committee – FIN147-06	710	27 February, 2006
3	Finance, Resources & Management Committee – FIN195-07	887	23 April, 2007
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Revision history

Version	Author	Date	Revision
1	Manager Property	13 April, 1993	Original Version
2	Manager Property	20 February, 2006	The amendments of the Community Land Management (Amendments) Act 1998 to the Local Government Act, 1993 rendered the policy difficult in its application; re-written to make more applicable
3	Manager Property	16 April, 2007	Amended to provide a first right of refusal to the existing tenant to take a fresh lease if it can be demonstrated there is capacity to meet lease obligations and where council has not given prior notice of an intent to demolish or change the purpose of the premises.
4	Manager Property	24 February, 2012	Annual Review conducted, no changes necessary
5	Manager Property	25 January, 2013	Annual Review conducted, no changes necessary
6	Property Services Manager	21 March, 2014	Annual Review conducted, no changes necessary
7	Property Services Manager	09 February, 2015	Annual Review conducted, no changes necessary

1 **Objective**

To set clear and equitable criteria for determining suitability of community groups and associations to lease community land.

Definitions

Community Groups:

Organisations which are not incorporated for profit purposes or private gain.

Community Land:

Community land under Local Government Act 1993 and land under Crown Lands Act 1989.

Lease:

Includes non exclusive licences.

2 **Policy Statement**

- (a) Capacity - That community groups demonstrate their capacity to meet the commitments under lease terms, prior to the lease being granted.
- (b) Cost Recovery - Council is to ensure that community leases do not impose an unreasonable burden on general revenue. Council is to obtain a reasonable community dividend (cost neutral) from the use of community land or building having regard to :
 - (i) community group's capacity to pay;
 - (ii) the merit of the service or facility provided by the community group.
- (c) Subsidised Rental - That the granting of subsidised rental conditions in leases are to be reflected in Community Services subsidy reports.
- (d) Limited Lease Term - That no community lease be for a term greater than five years unless exceptional circumstances are proven by the community groups.
- (e) Advertising Cost - That the cost of complying with statutory requirements for advertising be met by community groups.
- (f) 'Life of Building' - That no lease of a community building be granted Management unless a 'Life of Building' management plan is prepared indicating cost of structural and minor repairs likely during the term of the lease.
- (g) Multiple-Use - That council encourage multiple and optimum use of existing community buildings. Preference is to be given to the multiple permanent hiring of buildings over one exclusive occupation.
- (h) Review of Terms - All community leases are to include provisions for rent review, in the event council forms the view subsidised rentals are no longer appropriate.

- (i) Equality of Access - When a community lease expires and council wishes to retain community uses within the building, council is to offer the current occupant of the premises the first right of refusal for a new lease agreement and if the current occupant does not express an interest in continuing their occupation, council is to call 'expressions of interest' for the lease of buildings to ensure that interested community groups are given equal opportunity to obtain occupation.

3 Analysis of Policy

Background

Council has a number of community leases which have expired and in the past have been renewed to the same group on precisely the same terms.

The past lease arrangements have encouraged exclusion of new groups and perpetuated lease terms which have been detrimental to council's financial interests. This policy aims to ensure that a wider range of services and community groups are given equal opportunity to occupy community buildings/facilities and to alleviate some of the financial burden on council.

The primary issues addressed under this policy:

1. **capacity** of groups to meet obligations;
2. **subsidised rentals**;
3. the **term of lease**;
4. **whole of building life asset management**;
5. **Multiple uses of buildings** and to rationalise exclusive occupancies when current tenants are not using premises.

Capacity

It is an integral component of this policy that community groups have sufficient financial capacity to meet their lease obligations. Council will require community groups to demonstrate, via a 'business plan, policy statement or charter' together with audited financial reports, an ability to comply with the lease obligations over the term of the lease. The 'business plan' will need to identify memberships, funding sources and long term planning aims.

In the past community groups have called on council to undertake works outside the terms of council's obligations under the lease. This should be prevented if capacity is demonstrated.

Subsidised rentals

Council has many leases paying nominal rentals, ranging from \$2 to \$100 per year for the exclusive occupation of buildings. Some of these nominal rental figures are more than 20 years old. It is suggested that no new lease should have a nominal rental of less than \$440 per annum (which is about \$8 per week).

In granting leases council needs to be in a position to review the rental in the event that the tenant has an improved capacity to pay. In order to evaluate community group's finances it should be mandatory in all leases for copies of audited financial statements to be provided to the Council on request and /or a condition of lease or lease renewal. This will also assist Council in identifying groups who are in financial difficulties and likely to be in breach of conditions of lease requiring expenditure.

Subsidised rentals are indirect financial support to community groups and are not reflected in community services reporting. Council needs to demonstrate to stakeholders (the community) the true cost of supporting community services. Council's annual subsidy program should indicate existing levels of support to community groups by the provision of subsidised rentals.

Subsidised rentals are to be avoided unless the community group can demonstrate a special benefit to the greater community.

Subsidised rentals are not to be guaranteed in leases but subject to annual review in the event that the recipient group's financial circumstances improve.

The annual subsidy process for rentals should not be seen as an inconvenience to community groups but rather an active step by council to achieve transparent reporting on the distribution of limited resources. This practice is the same in principle to state and federal government reporting requirements where funding is provided.

Treating all community groups as being equally financially equipped to meet financial obligations under leases is clearly erroneous. Some community groups are in decline while others may be steady or even expanding. The present system of property management for community leases assumes all tenants are in a perpetual struggle to remain viable and will never be able to afford financial obligations above nominal rental levels. This may be true for a lot of the tenants. However, Council is an organisation committed to continuous improvement through the application of quality management principles. Consequently, it is imperative to use quantitative and qualitative data and as reliable measurement tools, rather than using inference to evaluate councils performance in the process of supporting community tenants.

Reviewing subsidies is not a tool for punishing community groups it is a means to establish the merit or social capital which the tenants contribute to the physical, cultural and intellectual wellbeing of the Sutherland Shire and to promote and support those groups making a valued contribution to Shire life.

Council will then be in the positive position of being able to claim credit for its substantial financial support of community organisations via subsidised rental for community facilities.

Lease term

The lease term is an important issue for council. Long term leases, that are greater than five years, are not appropriate in the majority of leases. The demand for security of 'tenure' via long lease terms represents:

- A potential desire to exclude council and the wider community from gaining access to buildings/facilities;
- A reduction in the perceived cost of granting leases. This is erroneous as long term leases cost more in statutory processes, than short term leases;
- Community leases are prepared in-house, using a model document, removing the requirement for council to contract external law firms;
- State & Commonwealth grants and loans often require community group to have tenure of lease premises in excess of funding amortisation;
- Tenure greater than 5 years can be sought with the provision of business plans that demonstrate capital expenditure that may need to be amortised over a period greater than 5 years.

Lease terms of greater than five years should only be offered where tenants can prove to council's satisfaction they intend to spend at least \$100,000 in new capital works approved by Council as landlord, and where a five year term is insufficient to write off the capital cost or secure finance for

the works. An example of this are the new restaurant and gym facilities at the surf clubs developed under lease.

Short term leases prevent tenants from becoming complacent and allow better asset management and community services planning. Council cannot afford to build new facilities when existing facilities are locked into long term low use leases.

Section 47A of The Local Government Act 1993 requires community leases to be advertised. If a proposed community lease requires advertising, the cost is to be met by the prospective tenant. This will ensure that proposed tenants are committed to the lease. This will need to be paid before the advertisement is placed.

Whole of building life asset management

Council needs to develop a "Life of Building" approach to community buildings. Lease terms need to reflect the condition and age of the building and type of use proposed by the tenant. Consideration of likely major and minor works needs to be factored into the lease and the determination of responsibility and timing to be specified. The analysis of building maintenance costs allows council to properly plan the life of the asset and ensure it does not become an unreasonable burden on council's financial resources.

It is important for the customer service relationship to clearly define and where possible estimate the cost of maintenance and repair obligations which are to be undertaken by the tenant. Historically repair obligations have been one of the most common disputes between council and its community tenants.

A maintenance schedule for the life of the lease is to be incorporated as a component of the negotiated lease terms. The Schedule of maintenance will clearly spell out the repair and maintenance, obligations of the tenant and landlord in plain English and avoid ambiguity. The works to be specified in date order.

If the maintenance obligations are clearly defined there is little scope for either party to argue ignorance. The likelihood of council remedying problems should be significantly reduced.

The objectives of this point in the policy are to contribute to the longevity of council building assets and ensure buildings are not demolished prematurely for lack of maintenance.

Multiple uses of buildings

Single inefficient occupation of community properties contributes to unsustainable asset management costs. In order for council to effectively manage asset costs/expenses, facilities are to be shared.

Another of Council's objectives under this policy is for multiple uses of all community facilities. Where possible, compatible users should be accommodated together, rather than consider the construction of new buildings. Council needs to determine before granting a lease whether other groups can share the facility or if the existing tenant can share another facility. Low-use facilities are to be reviewed.

A further Council objective is to ensure that suitable community groups have equal opportunity to occupy community buildings under lease. Historically, low use groups such as scouts and guides have renewed leases regardless of diminishing memberships. This has resulted in poorly maintained buildings being returned to council when leases are terminated.

Future community buildings be of designs suitable for more than one user group and be offered to community groups through a public tender process, at the expiration of lease terms.